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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,172	11/10/2000	Federico Garcea	MS154756.1	4256
27195	7590	02/23/2005	EXAMINER	
AMIN & TUROCY, LLP 24TH FLOOR, NATIONAL CITY CENTER 1900 EAST NINTH STREET CLEVELAND, OH 44114			PATEL, HARESH N	
			ART UNIT	PAPER NUMBER
			2154	
DATE MAILED: 02/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/710,172

Applicant(s)

GARCEA ET AL.

Examiner

Haresh Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/23/2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 17-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/26/01 & 11/15/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-42 are presented for examination. Claims 17-42 are withdrawn.

Response to Arguments

2. Applicant's arguments filed 9/23/04 have been fully considered but they are not persuasive. Therefore, rejection of claims 1-16 is maintained.

Applicant argues, (1) “Teegan et al., 6,748,555 (Hereinafter Teegan) does not teach or suggest a gathering and aggregating system adapted to gather operational metrics relating to system level operation, wherein the operational metrics relate to system level operation and include data on system performance, system status, system health, system state, and system events associated with the plurality of members”. The examiner respectfully disagrees in response to applicant's arguments. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies “a gathering and aggregating system adapted to gather operational metrics relating to system level operation, wherein the operational metrics relate to system level operation and include data on system performance, system status, system health, system state, and system events associated with the plurality of members” are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). What is claimed is “a gathering and aggregation system adapted to gather operational metric data from the plurality of members, the operation metric data being at least one of performance metric data, event metric data, status metric data and health metric data”. Teegan

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clearly teaches a gathering and aggregation system (e.g., figures 1, 5, 9, 12, 15, abstract), adapted to gather operational metric data from the plurality of members (e.g., abstract, col., 3, line 26 – col., 4, line 6, col., 5, lines 27 – 44), the operation metric data being at least one of performance metric data, event metric data, status metric data and health metric data (e.g., figure 11, abstract). Therefore, the rejection is maintained. Since, applicant's claims contain broadly claimed subject matter, it clearly reads upon the examiner's interpretation of these actions. Therefore, Teegan meets the claimed limitations.

Applicant argues, (2) “Claims 5, 8 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Teegan et al. in view of Official Notice. Applicant’s representative respectfully submits that this rejection should be withdrawn for at least the following reasons. The Teegan et al. patent and the subject patent application are commonly owned by Microsoft Corporation and the applicants were under an obligation of assignment to Microsoft Corporation at the time the subject invention was made. For this reason, Teegan et al. cannot be used to preclude patentability under 35 U.S.C. 103. See 35 U.S.C. 103(c)). Hence, this rejection should be withdrawn”. The examiner agrees with this applicant’s argument. However, all the limitations of claims 5, 8 and 15 is addressed by the new ground(s) of rejection (please refer to the below rejections of this office action). Therefore, the rejection to the claims 5, 8 and 15 is maintained.

Election/Restrictions

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3. Applicant's election with traverse of Invention I, i.e., claims 1-16 in the reply filed on 9/23/04 is acknowledged. Applicant's selection to withdraw claims 17-42 of non-elected inventions has been acknowledged. Applicant is requested to cancel claims 17-42.

Information Disclosure Statement

4. An initialed and dated copy of Applicant's IDS form 1449 (submitted on 2/26/2001) is attached to the instant Office action. (For clarification, post card for IDS submission dated 2/26/01 corresponds to the IDS form 1449 submitted on 2/26/01 and not the IDS form 1449 submitted on 11/15/2004).

5. An initialed and dated copy of Applicant's IDS form 1449 (submitted on 11/15/2004) is attached to the instant Office action.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-4, 6, 7, 9-14, 16, are rejected under 35 U.S.C. 102(e) as being anticipated by Teegan et al. 6,748,555 (Hereinafter Teegan), as per office action, paper number 3, dated, 6/22/2004.

8. Claims 1, 3-8, 15, are rejected under 35 U.S.C. 102(e) as being anticipated by Salzberg et al. 2003/0086536, U. S. Publication 2003/0086536, KPMG Consulting Inc (Hereinafter Salzberg-KPMG).

9. As per claims 1, 3-5, Salzberg-KPMG clearly teaches a system (e.g., figures 8, 14, 15) for gathering and aggregating operational metrics (e.g., paragraph 57, page 6, paragraphs 88, 92, page 11) of a plurality of members configured as an entity (e.g., paragraph 150, page 27 – paragraph 155, page 28), comprising:

at least one of the plurality of members having a gathering and aggregation system (e.g., figures 8, 14, 15, paragraph 105, page 13, paragraph, paragraph 150, page 27) adapted to gather operational metric data from the plurality of members (e.g., paragraph 151, page 28) and aggregate the operational metric data into a unified result set (e.g., paragraph 138, page 22),

a metric monitor system for each of the plurality of members (e.g., figures 8, 14, 15, paragraph 139, page 22, paragraph 105, page 13), the metric monitoring system monitoring member specific metrics (e.g., figures 8, 14, 15, paragraph 139, page 22, paragraph 105, page 13) and employing a time aggregation component to aggregate member specific metrics over time (e.g., figures 8, 14, 15, paragraph 139, page 22, paragraph 105, page 13),

the time aggregation component operable to aggregate member specific performance metrics data into data of larger time periods and larger resolutions (e.g., paragraph 409, page 58 – paragraph 412, page 59, paragraph 92, page 11, paragraph 140, pages 23 – 24), by taking one of an average, a minimum, a maximum, a last and a weighted average of performance metrics data of a first time period (e.g., paragraphs 92-94, page 11) and first resolution to evaluate

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performance metric data of a consecutive time period and consecutive resolution (e.g., paragraphs 411 – 414, page 59).

10. As per claims 6-8, Salzberg-KPMG teaches the claimed limitations rejected under claim

1. Salzberg-KPMG also teaches the following:

a performance metric aggregation component (e.g., figures 8, 14, 15, paragraph 105, page 13, paragraph, paragraph 150, page 27) adapted to gather and aggregate performance metric data values of a particular time period and resolution (e.g., paragraph 409, page 58 – paragraph 412, page 59, paragraph 92, page 11) from the plurality of members based on a time period requested by a requestor (e.g., paragraph 140 , pages 23 – 24, paragraph 60, page 7),

aggregate data performance values having similar data times to form a unified result set over the particular time period and time resolution (e.g., paragraph 140 , pages 23 – 24, paragraph 409, page 58 – paragraph 412, page 59),

the performance metric aggregation component aggregating member specific performance metrics data into a unified result set by evaluating a single data value for data points of similar data times by taking one of an average, a minimum, a maximum, a last and a weighted average data of similar data times (e.g., paragraphs 92-94, page 11, paragraphs 411 – 414, page 59).

11. As per claim 15, Salzberg-KPMG teaches the claimed limitations rejected under claim 1.

Salzberg-KPMG also teaches the following:

the gathering and aggregation system being operable to aggregate valid operational metric data (e.g., paragraphs 529 – 532, page 74) and compensate for invalid operational metric data (e.g., paragraph 543, page 75 – paragraph 547, page 76).

Conclusion

The prior art made of record (forms PTO-892 and applicant provided IDS cited arts) and not relied upon is considered pertinent to applicant's disclosure.

Hendrickson et al., U. S. Publication 2002/0069037, June 6, 2002, also teaches a system for gathering and aggregating operational metrics a plurality of members configured as an entity.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 11/15/2004 prompted the new ground(s) of rejection presented in this Office action. The claims 1, 3-8, 15 are rejected using the cited art (Salzberg et al. 2003/0086536, U. S. Publication 2003/0086536) of form PTO-1449, dated 11/15/2004, provided to the examiner after the office action, dated 6/22/2004. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

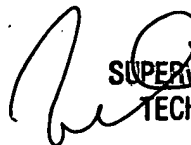
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is (571) 272-3973. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Haresh Patel

February 16, 2005

 JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100